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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. RAYVONE ROBINSON, Defendant and Appellant.	B209678 (Los Angeles County Super. Ct. No. TA090833)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gary R. Hahn, Judge. Affirmed.

Koryn & Koryn, Daniel G. Koryn, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Scott A. Taryle and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant, Rayvone Robinson, appeals the judgment entered following his conviction, by jury trial, for murder, attempted murder (4 counts), assault with a firearm, and robbery (2 counts), with firearm use and gang enhancements (Pen. Code, §§ 187, 664/187, 245, 211, 12022.5, 12022.53, 186.22).[1] Robinson was sentenced to state prison for a term of 166 years to life.

The judgment is affirmed.

BACKGROUND

Viewed in accordance with the usual rule of appellate review (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), the evidence established the following.

1. *The murder*.

Oshea Williams and Faith Patterson had been dating on and off since the seventh grade. Williams was a member of the Front Hood Crips gang. Sometime around 2003 or 2004, they stopped dating because Williams went to jail. Patterson then started dating defendant Robinson, who was a member of the Fruit Town Piru gang, a rival of the Front Hood Crips.

Robinson and Patterson dated for six months. About a month before Williams was to be released from jail, Patterson ended her relationship with Robinson. She began to date Williams again once he was released. Robinson was unhappy about this.

The murder occurred on May 11, 2004, three or four months after Williams got out of jail. Williams was driving his car on Rosecrans Avenue. His passengers included Tanesha Love and two men. They came to a stoplight at the intersection of Rosecrans and Willowbrook, which was a Fruit Town Piru stronghold. Suddenly, Robinson ran into the street with a 9-millimeter handgun and fired at the car multiple times. Williams was killed and the car began to swerve. The front seat passenger grabbed the wheel and steered the car to the side of the road. Love had been shot in the leg.

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[1] All further statutory references are to the Penal Code unless otherwise specified.

Seven 9-millimeter bullet casings were found at the scene. They matched a 9-millimeter semiautomatic Taurus pistol subsequently recovered from the home of a man who was Robinson's cousin and foster brother.

A couple of days after the shooting, Robinson and Steven Cheatam, who was Love's older brother and a Fruit Town Piru gang member, were talking in the courtyard of the Douglas Apartments. These apartments were located on the corner of Rosecrans and Willowbrook; Robinson and several other Fruit Town Piru gang members lived there. Shelnesha Cox, a cousin of both Cheatam and Love, was present and overheard the conversation. Cheatam asked Robinson, "Why did you shoot my sister?", and Robinson replied he hadn't known she was in the car.

Sometime after that conversation, Cox learned the police had questioned her fiancé, Claddis Ryles, about the shooting. Ryles was also a Fruit Town Piru member. Later, Cox told Robinson the police had questioned Ryles and were trying to pin the shooting on him. Cox asked Robinson what he was going to do about it. Robinson replied he didn't want Ryles to go to jail for something Robinson had done.

A couple of weeks after the shooting, Bruce Hicks, a former member of the Fruit Town Piru gang, overheard Robinson bragging to another Fruit Town Piru member that he had killed Williams.

Robinson told Shari Pinkney, a woman he was dating, that he planned to go to Georgia because he heard the police were investigating him for the Williams murder. Pinkney also testified she had seen Robinson do the shooting.

2. *The robbery.*

On October 13, 2004, Robinson and Rufus Brown, a fellow Fruit Town Piru gang member, entered a Weinerschnitizel restaurant just after closing. The manager, Jesus Ticun, was in the restaurant with another employee. Robinson and Brown demanded money from Ticun. Robinson had a gun. Ticun said the money was in a safe he could not open. Robinson shot Ticun twice, then ordered him and the other employee to get on the floor. Robinson and Brown kicked Ticun numerous times and took his cell phone, wallet, and money.

Robinson told Pinkney he committed the restaurant robbery. Pinkney also identified him from the surveillance video.

3. *Gang evidence.*

Los Angeles County Sheriff's Deputy Q. Rodriguez testified as a gang expert. The Fruit Town Piru gang had about 250 members. Their primary activities included drug trafficking, robberies, shootings, murders, and gang warfare. He explained there is an unwritten code that witnesses who live in gang communities, especially gang members themselves, not cooperate with the police.

Answering hypothetical questions based on the evidence presented at trial, Rodriguez opined Robinson had committed both crimes for the benefit of the Fruit Town Piru gang.

Robinson did not present any evidence.

CONTENTIONS

1. The trial court erred by sustaining the prosecution's hearsay objection to impeachment evidence.

2. The trial court erred by admitting evidence in violation of Evidence Code section 352.

DISCUSSION

1. *The sustaining of the prosecution's hearsay objection.*

Robinson contends the trial court erred when, acting on the prosecution's objection, it excluded testimony that would have impeached a witness's account of having heard Robinson confess to shooting Williams. However, even had defense counsel made the proper argument below, the exclusion of this evidence did not affect the outcome.

a. *Background*.

Shelnesha Cox testified she overheard the conversation between Robinson and Cheatam in which Robinson apologized for having shot Love, who was Cheatam's sister. In order to impeach Cox's testimony, defense counsel asked if she had told Officer Steven Katz that Williams and Cox's then-fiancé, Ryles, had gotten into a fight a few days before the murder:

At a bench conference after the trial court sustained the prosecutor's hearsay objection, defense counsel said, "I just want her to answer that she told Sergeant Katz that [Ryles] had been in a fight with [Williams] a few days before the murder and that's why she was so concerned about him being the suspect." When the trial court said, "That goes into hearsay, does it not . . . because she wasn't there, didn't see it?", defense counsel responded: "No, but I'm offering it as an exception to that because it explains her state of mind, her bias." The trial court affirmed its decision to sustain the prosecutor's objection.

The following colloquy then occurred:

"Q. [By defense counsel]: Did you have personal knowledge of a fight between [Ryles] and [Williams]?

"[Prosecutor]: Objection, Your Honor.

"The Court: Did you actually see it happen?

"The Witness: No.

"Q. [By defense counsel]: Were you very concerned about him being a suspect in this case when you heard he was questioned about this case?

"A. Yes."

Sergeant Katz later testified he questioned Ryles in connection with this case. He also questioned Cox and she was aware he had questioned Ryles. Cox told Katz she was worried that Ryles had been questioned about the Williams shooting.

b. *Discussion*.

Cox's statement to the police that a fight took place between Ryles and Williams shortly before Williams was killed constituted hearsay if offered to prove the truth of the

matter asserted, i.e., that such a fight occurred. (See Evid. Code, § 1200, subd. (a) [" 'Hearsay evidence' is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated"].) Robinson argues the statement was not hearsay because it was not offered to prove the fight occurred, but only to demonstrate Cox's state of mind: that she was worried the police suspected Ryles of killing Williams. "[A] statement which does not directly declare a mental state, but is merely circumstantial evidence of that state of mind, is not hearsay. It is not received for the truth of the matter stated, but rather whether the statement is true or not, the fact such statement was made is relevant to a determination of the declarant's state of mind. [Citation.]" (*People v. Ortiz* (1995) 38 Cal.App.4th 377, 389.)

Defense counsel wanted to impeach Cox's testimony that Robinson had confessed to her by showing she had a strong motive for implicating him as a way of protecting Ryles. If Cox believed Ryles had fought with Williams shortly before he was killed then, whether or not such a fight actually occurred, Cox's belief that it did raises an inference she figured the police had reason to suspect Ryles of killing Williams, thus giving her a motive to lie about Robinson.

However, defense counsel at trial did not offer this non-hearsay justification for admissibility. Rather, defense counsel argued the testimony was admissible as a hearsay exception for "evidence of a statement of the declarant's then existing state of mind . . . ." (Evid. Code, § 1250, subd. (a).) As a result, Robinson cannot rely on the non-hearsay justification in this court. (See *People v. Fauber* (1992) 2 Cal.4th 792, 854 ["As nonhearsay evidence relevant to a disputed issue . . . , it should have been admitted . . . . [¶] Defendant's trial counsel did not, however, specifically raise this ground of admissibility. In these circumstances he is precluded from complaining on appeal"].)

In any event, even had defense counsel made the proper argument below, and even had the trial court still excluded the evidence, we would not reverse Robinson's

conviction because the error would have been harmless.[2] (See *People v. Von Villas* (1992) 10 Cal.App.4th 201, 268 [decision to admit or exclude evidence lies within discretion of trial court and erroneous decisions are tested under the *Watson*[3] harmless error standard].)

In the first place, although this evidence tending to show Cox's possible bias was excluded, the trial court did admit the slightly more general evidence, from both Cox and Sergeant Katz, that she expressed concern because the police had interviewed Ryles about the Williams murder.

In the second place, even if Cox's testimony inculpating Robinson is put to one side, his guilt was still supported by an overwhelming amount of evidence. Robinson had a motive because of his relationship with Patterson, and the murder weapon was found at the residence of Robinson's cousin and foster brother. Not only did Hicks overhear Robinson telling someone he had killed Williams, but Pinkney testified *both* that Robinson confessed to her *and* that she had been an eyewitness to the shooting.

Hence, even had Robinson not waived this issue on appeal, the outcome of his trial would not have been any different had the excluded evidence been admitted.

2. *Patterson's testimony properly admitted*.

Robinson contends the trial court erred by allowing Faith Patterson to testify she had been involved with Robinson while Williams was in prison, but then broke up with Robinson and got back together with Williams when he was released. This claim is meritless.

a. *Legal principles.*

"Relevant evidence is defined in Evidence Code section 210 to mean (in pertinent part) '. . . evidence . . . having any tendency in reason to prove or disprove any

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[2] We address this issue in order to avert any claim of ineffective assistance of counsel. (See *People v. Yarbrough* (2008) 169 Cal.App.4th 303, 310.)

[3] *People v. Watson* (1956) 46 Cal.2d 818, 836.

disputed fact . . . .' [¶] This definition of relevant evidence is manifestly broad. Evidence is relevant when no matter how weak it is it tends to prove a disputed issue." (*In re Romeo C.* (1995) 33 Cal.App.4th 1838, 1843.) A trial court may exclude evidence if its probative value is substantially outweighed by the probability of wasted time or the danger of undue prejudice, confusing the issue, or misleading the jury. (Evid. Code, § 352.) A trial court's exercise of discretion under Evidence Code section 352 will not be overturned on appeal unless there has been an abuse of that discretion. (*People v. Raley* (1992) 2 Cal.4th 870, 895; see also *People v. Von Villas, supra,* 10 Cal.App.4th at p. 268 [decision to admit or exclude evidence lies within discretion of trial court and erroneous decisions are tested under the *Watson*[4] harmless error standard].)

" 'The prejudice which exclusion of evidence under Evidence Code section 352 is designed to avoid is . . . "prejudging" a person or cause on the basis of extraneous factors. [Citation.]' " (*People v. Zapien* (1993) 4 Cal.4th 929, 958; see *People v. Karis* (1988) 46 Cal.3d 612, 638 [" ' "prejudice" referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual" ' "].)

b. *Discussion*.

The evidence showing Robinson had a motive for killing Williams was clearly relevant and probative. Contrary to Robinson's argument, the relevancy of this evidence was not outweighed by its prejudicial nature.

Motive is always a relevant fact. (See *People v. Sykes* (1955) 44 Cal.2d 166, 170 ["Motive is a material fact."]; *People v. Vidaurri* (1980) 103 Cal.App.3d 450, 461 ["defendant's motive – a state-of-mind fact – is relevant to prove that he committed the offense charged"]; *People v. Perez* (1974) 42 Cal.App.3d 760, 767 ["Motive is always relevant in a criminal prosecution."].)

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[4] *People v. Watson* (1956) 46 Cal.2d 818, 836.

Robinson complains the evidence was extremely prejudicial: "The sensitive nature of this evidence – which portrayed appellant as being involved in a jealous shooting over a woman – would obviously tend to evoke an emotional bias against [him]," and "the fact [he] had a 'beef' with Williams had more to do with gang animosity than any personal animosity over the fact they had dated the same woman." But surely the gang motive would have elicited a far more prejudicial response from the jury than the jealous-lover motive. Whatever stigmatizing effect the jealous-lover evidence might have had was far outweighed by the probative value of such strong motive evidence. And contrary to Robinson's claim that this evidence consumed too much time, the Attorney General notes Patterson's testimony only took up eight pages of the reporter's transcript.

The trial court did not abuse its discretion by admitting this evidence.

DISPOSITION

The judgment is affirmed.

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KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.